SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

LAKE LUCERNE PLAZA, INC.,

Petitioner,

vs.

CHESTER BOWLES, AS ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below

Opinion of the Circuit Court of Appeals does not appear in any of the official or advance sheets of the reporter systems but copy thereof appears at pages 116-121 of the Record.

II

Jurisdiction

1. Jurisdiction is invoked under Judicial Code, Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. A., Section 347.

2. The date of the judgment to be reviewed is April 14, 1945. Rehearing denied May 17, 1945. Judge Waller, Circuit Judges, dissenting and pointing out as follows: (R. 129)

> "I vote to grant a rehearing in this case. I am unable to bring myself to believe that a court of equity should lend its processes to the perpetuation of an admitted wrong. It seems to me that this Court has treated this case as if the landlord were seeking relief in this Court instead of the O. P. A. The O. P. A. should not be entitled to an injunction from this Court to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving."

3. The nature of the case, and the fact that the rulings below were such as to bring this case within the jurisdictional provisions relied on, are fully disclosed in the petition for writ of certiorari under Subdivisions "A" and "B".

4. The following are the cases relied on to sustain the jurisdiction:

Davis Warehouse Co. v. *Bowles,* 321 U. S. 144, 64 S. Ct. 474, 88 L. Ed. 635;

Bowles v. *Willingham,* 321 U. S. 503, 64 S. Ct. 641, 88 L. Ed. 892;

Hecht Co. v. *Bowles,* 321 U. S. 321, 64 S. Ct. 587, 88 L. Ed. 754;

Lockerty v. *Phillips,* 319 U. S. 182, 63 S. Ct. 1019, 87 L. Ed. 1339.

III

Statement of Case

The statement of case is fully set forth in the petition for writ of certiorari and for the sake of brevity will be omitted here.

IV

Specification of Errors

The Circuit Court of Appeals erred:

1. In reversing the District Court, wherein the District Court had construed the maximum rent regulation for housing issued by the Office of Price Administration, Section 5(c), under the Emergency Price Control Act, and had held in effect that the regulation itself had limited the authority of the Administrator to decrease maximum rents only to the rent generally prevailing in the Defense Rental Area for comparable housing accommodations on October 1, 1941, and that an order entered by an area director, which attempted to reduce the rent to a lower level than the formula fixed by the regulation itself, should not prevail over the express terms of the regulation itself.

2. In holding that the District Court, sitting as a court of equity, should lend its processes to the perpetuation of an admitted wrong.

3. In holding that the Office of Price Administration was entitled to an injunction in an action brought by it to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving.

4. In holding that Section 204(d) of the Emergency Price Control Act had deprived the District Court of the power or the jurisdiction to consider whether a regulation issued under the Emergency Price Control Act should prevail over an admittedly erroneous order issued by an inferior agency where the inferior agency had sought to utilize the particular regulation itself in attempting to exercise the powers prescribed by such regulation.

5. In holding that it was necessary to appeal to the Emergency Court of Appeals to obtain a proper construc-

tion of whether the regulation should prevail over an admittedly "illegal" order of an inferior area rent director in a case where the Administrator himself had corrected the error made by the "illegal" order.

6. In holding that the general legal principles applying in cases of appeal from lower to higher courts do not apply to the various steps taken for the review of an order entered by an area rent director.

7. In holding that the District Court, in denying injunctive relief prayed for and in dismissing the appeal, had not exercised its discretion in refusing to grant the injunction prayed for.

8. In holding that the alleged actions sought to be enjoined were violative of the Emergency Price Control Act.

9. In failing to recognize that the District Court in the order appealed from was merely construing the legal effect of the regulation as against the order sought to be enforced in the light of the corrective order subsequently entered by the Office of Price Administration itself reversing the very basis of the erroneous order entered by the area rent director.

10. In failing to recognize that the landlord had, by its protest and appeal to the Office of Price Administration, obtained a reversal of the very order sought to be enforced and was entitled to the benefit of its appeal.

11. In failing to hold that the rents established by the landlord under the regulations and in effect prior to June 29, 1943 remained the lawful rents until lawful rents were established pursuant to the Act and Regulations issued thereunder.

12. In refusing to hold that the effect of a review of the legality of the order of the area rent director was controlled

by the same general principles that apply in cases appealed from lower to higher courts and that the order of the Office of Price Administration dated February 29, 1944, which established the maximum ceilings for the property in question became the only lawful order changing the rentals theretofore lawfully established and that said order of February 29, 1944 reverted to June 29, 1943, the date of the entry of the "illegal" order of the area rent director, which it supersedes.

13. In refusing to hold as did the District Court, that the lawful rents from and after date of June 29, 1943 for the use and occupancy of the accommodations in question were the rents established by the Office of Price Administration by its order entered February 29, 1944.

V

ARGUMENT

Summary of Argument

A. The District Court, in construing the Emergency Price Control Act and the applicable regulations issued thereunder, held that the area rent director's order undertaking to reduce the rents to a lower level than those prescribed by Section 5(c) should not prevail over the formula fixed by the regulation itself, where the Administrator had subsequently correctly established the proper maximum ceilings under the Act itself. The holding of the Circuit Court of Appeals is to the effect that, while the order of the area rent director may be arbitrary and capricious, nevertheless, the landlord must have sought construction thereof in the Court of Emergency Appeals. The District Judge and Circuit Judge Waller both disagreed with this view.

B. Both the District Judge and Circuit Judge Waller took the position that a court of equity should not lend its

processes to the perpetuation of an admitted wrong. That the Office of Price Administration itself brought the action to prevent the landlord from attempting to extricate itself from an illegal and unjust web of the O. P. A.'s own weaving and, having invoked the jurisdiction of the Court as provided for by the Act, the District Court had the power to make its own construction as to whether the terms of the regulation should prevail over the "illegal" order. Moreover, that the Office of Price Administration itself had, by the entry of its order reversing the basis of the area rent director's findings, established a maximum ceiling so that such maximum ceiling so fixed became the lawful rents to be collected from date of the entry of the "illegal" order.

C. Both the District Judge and Circuit Judge Waller supported the view that general legal principles applicable in cases of appeal from lower to higher courts should apply to the various steps prescribed for the taking of a review on an adverse order entered by an area rent director. The majority opinion took the reverse view and reversed the case on that ground.

D. Both the District Judge and Circuit Judge Waller took the view that the landlord had sought his remedy of appeal and protest as provided for by the Act and the Regulations issued thereunder and that the effect of the action taken by the Office of Price Administration in the entry of its order of February 29, 1944 was the only legal order which changed the rentals from the first rentals received by the landlord and, therefore, these rentals so fixed reverted to date of June 29, 1943, the date of the entry of the "illegal" order of the area rent director, which was superseded by the order of the Office of Price Administration entered February 29, 1944.

The majority opinion takes a contrary view. However, this latter view overlooks the fact that the formula which

fixed rentals in such cases provides for a reduction only to the level of rents generally existing comparable to those of October 1, 1941 and, to allow the area rent director's order to stand would be discriminatory and contrary to the rents generally allowed to other landlords by the very Act under which the Administrator proceeded.

A

QUESTION No. 1

Does a Federal District Court have the power under the provisions of the Emergency Price Control Act to construe a regulation issued by the Office of Price Administration as prevailing over an order issued by an area rent director, which order is in conflict with the terms of the regulation itself?

The area rent director undertook to reduce the established rentals of the landlord under Regulations, Section 5(c)(1), which provides:

> "(c) Grounds for decrease of maximum rent. The Administrator at any time on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, *only* on the grounds that:
>
> (1) Rent Higher than rents generally prevailing. The maximum rent for housing accommodations under paragraph (c), (d), (e) and (g) of Section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date." (Italics ours.)

The Administrator in interpreting this regulation (R. 34) recites:

> "The rent director may order a decrease *to* the rent generally prevailing for comparable dwellings on the maximum rent date." (Italics ours.)

Therefore, the regulations issued under the Emergency Price Control Act had by formula fixed and determined these rents. The order of June 29th undertook to fix the rents at a lower level than the Act and Regulations had expressly specified. The order and opinion of the Administrator dated February 29th not only confirms this fact, but in express terms establishes the maximum rents on the basis that they were the rents generally prevailing in the Defense Rental Area for comparable housing accommodations on the maximum rent date.

The area rent director having utilized this regulation for the purpose of reduction of the ceilings was bound by the prescribed formula. It therefore becomes a matter of construction as to whether or not having availed itself of the regulation under which the rents could be reduced the fixed formula set forth in the regulation should prevail over the erroneous order of the local director. In other words appellee had availed itself of its appellate remedies and was successful in having the Administrator reverse the very basis upon which the order of June 29th was entered. There is a conflict between the order of June 29th, the regulation and the order of February 29th. The regulation and the order of February 29th coincide. The order of June 29th obviously is illegal if not in accord with the regulation by proper construction.

The Supreme Court of the United States in *Davis Warehouse Co.* v. *Bowles*, 321 U. S. 144; 64 S. Ct. 474; 88 L. Ed. 635, clearly indicates that the Courts may construe the Emergency Price Control Act and are not bound by the constructions of the Act placed thereon by the Administrator, quoting:

> "Lastly, it is contended that we should accept the Administrator's view in deference to administrative construction. The administrative ruling in this case was no sooner made than challenged. We cannot be

certain how far it was determined by the considerations advanced, mistakenly as we think, in its defense in this case. It has hardly seasoned or broadened into a settled administrative practice. If Congress had deemed it necessary or even appropriate that the Administrator's order should in effect be final in construing the scope of the national price-fixing policy, it would not have been at a loss for words to say so. We do not think it should overweigh the considerations we have set forth as to the proper construction of the statute."

The construction which the administrator and the majority opinion of the C. C. A. have placed on the regulations and the Act would defeat the very cardinal purposes of the law itself. Suppose, for instance, the order of June 29th had placed $1 per year as the maximum ceilings. Appellee would be bound by them. To go a little further, suppose the administrator had ordered the landlord to pay the tenant $100 per month for allowing the tenant the use and occupancy of the premises. In both of these cases, a violation would occur if the Court is to hold the order of June 29th binding for the period between its date and the date of the changed order.

B

QUESTION No. 2

In a case brought by the Office of Price Administration in a United States District Court of Equity to perpetuate an admitted wrong, should the Court of Equity lend its processes to aid the Office of Price Administration in preventing a landlord from attempting to extricate himself from an illegal and unjust web of the Office of Price Administration's own weaving?

Both the District Judge and Circuit Judge Waller were of the opinion that the foregoing questions should be an-

swered in the affirmative. However, the majority opinion of the Circuit Court of Appeals does not so indicate.

The Supreme Court of the United States in the case of *Hecht Co.* v. *Bowles,* 321 U. S. 321; 64 S. Ct. 587; 88 L. Ed. 754, clearly indicates that a court of equity should not lend its processes to aid the Office of Price Administration in perpetuating an admitted wrong. The action taken by the Office of Price Administration and the area rent director in the case at bar were voluntarily made. The landlord was not seeking an adjustment of an established fixed rent but the area rent director himself voluntarily sought to disturb an already existing lawful rental. In so doing, the area rent director proceeded to lower the rentals without examining the property and in violation of the very regulation which he utilized to reduce the rents. The National Office of Price Administration admitted the error and corrected the wrong. This was admitted by the stipulation filed in the case. Obviously, Circuit Judge Waller and the District Judge are correct, and the majority opinion of the Circuit Court of Appeals incorrect in holding that an injunction should issue in such a case.

C

QUESTION NO. 3

Where a landlord avails himself of the procedure set forth in the Emergency Price Control Act and the regulations issued thereunder and obtains a reversal from an adverse order issued by an area rent director, should the general legal principles applicable in cases of appeal from lower to higher courts apply so that the landlord should be entitled to the benefits of his appeal?

The foregoing question was answered very definitely in the affirmative by the District Judge. Circuit Judge Waller

apparently was of the same opinion. However, the majority opinion holds to the contrary. The conclusion of law reached by the District Judge was as follows: (R. 108-109)

> "This Court holds that as the Emergency Price Control Act of 1942 and regulations issued thereunder authorizing an appeal from an order of an Area Rent Director requires, in the judicial process, first an appeal to the Regional Administrator, followed by an appeal to the Office of Price Administration before the appeal may be perfected to the United States Emergency Court of Appeals created by said Act, that each step taken for the review of an order entered by an Area Rent Director is in effect a review of the legality of the order of said Director and is controlled by the same general legal principles that apply in cases appealed from lower to higher courts. This Court, therefore holds that the order of the Office of Price Administration dated February 29, 1944, became the only lawful order changing the rentals theretofore lawfully established by the defendant and that said order reverted to June 29, 1943, the date of the entry of the illegal order of the Area Rent Director for the Orlando Defense Area, which it superseded."

The precise question had not been passed on by any other court involving the effect of an appeal and protest under the Emergency Price Control Act. However, the Supreme Court of the United States, in *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 88 L. Ed. 1488, in the majority opinion by Mr. Justice Frankfurter apparently recognizes the principle here enunciated in a wage case, where the court said that, as against retroactivity, we balance the considerations that made retroactivity seem the lesser evil and remanded the case to the lower court for the administrator to promulgate a proper definition for the purpose of fixing rates of pay which would be retroactive. There is no distinction between allowing the proper rate of pay for wages

and allowing them for the use and occupation of property retroactively, even where an administrative body fixes the rates in either case.

It is submitted that the question as framed should be answered in the affirmative and the same general legal principles applicable in cases of appeal from lower to higher courts applied in the case at bar, so that the landlord should be entitled to the benefit of his appeal.

Moreover, there was no order issued by the Office of Price Administration with which the petitioner could proceed in the Court of Emergency Appeals. The landlord had already wiped out the very basis of the order of the area rent director when the generally prevailing rents were established by the order entered on the protest filed.

D

QUESTION NO. 4

When a landlord has sought his remedy by his appeal and protests as provided for by the Emergency Price Control Act and the regulations issued thereunder and the Office of Price Administration in its opinion on the appeal has established the maximum rent ceilings for the property involved, should these ceilings so established revert to the date of the entry of the illegal order entered by the local area rent director, which illegal order was superseded by the later order of the Office of Price Administration, correcting the illegal order?

Here again the question becomes a matter of construction as to whether the regulations which provides for maximum rent ceilings and the freezing thereof as of a certain date shall be construed to prevail over the entry of an "illegal" order which was entered by a local area rent director seeking to reduce the rentals in question to a lower level

than those prescribed by the Emergency Price Control Act itself.

The District Judge and the Circuit Judge Waller both concluded that the later order of the Office of Price Administration correcting the "illegal" order and fixing and determining the maximum ceilings should revert to the date of the entry of the "illegal" order.

The respondent will no doubt object to the use of the term "illegal" order. However, the District Judge himself described the order of the area rent director issued June 29th, 1943, as being "illegal". It was "illegal" in that it was entered arbitrarily, capriciously and not in accordance with the law. It was "illegal" because it was entered by the area rent director without examining the property and fixing the maximum ceilings in accordance with the prescribed formula. It was "illegal" because it was in violation of the Act itself and the regulation, Section 5(c)1, under which the area rent director attempted to proceed.

The case presented is not one where the landlord sought an adjustment, but is one where the Act and the regulations both fixed and determined that the first rentals received after the freeze date were lawful rentals unless and until changed by a lawful order. The only lawful order entered was the order of February 29th, 1944, which reversed the order of June 29th, 1943 and fixed and determined the maximum ceilings on the property in question.

It is submitted that the District Judge and Circuit Judge Waller were correct in their conclusions and that the majority opinion of the Circuit Court of Appeals was in error in holding that these established ceilings should not revert to the date of the entry of the "illegal" order.

Conclusion

We submit that the District Judge's findings and conclusions of law are correct and that the opinion of Circuit

Judge Waller in upholding them on the questions here presented is likewise correct and that the Circuit Court of Appeals in its majority opinion has erred in that the United States District Courts sitting as Courts of equity should not be required to have its processes used to perpetuate an admitted wrong.

It is also submitted that the Federal Courts should have the power to place a proper construction upon the Act and the regulations issued thereunder to the extent that when an action is brought under the provisions of the Emergency Price Control Act the Trial Court should be permitted to determine for itself whether the Act and the regulations should prevail over an "illegal" order entered by an inferior agency of the Office of Price Administration.

It is also submitted that when the administrator has selected his forum and filed a suit pursuant to the provisions of the Act seeking enforcement of an admittedly erroneous order that he should be bound by the decision made by the Court and should not be heard on appeal to object to the forum which he has selected.

Respectfully submitted,

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